

CHAPTER 157

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 19-002

BY SENATOR(S) Winter and Fenberg, Bridges, Danielson, Donovan, Fields, Foote, Gonzales, Lee, Moreno, Pettersen, Rodriguez, Story, Tate, Todd, Williams A., Garcia;
also REPRESENTATIVE(S) Roberts and Jackson, Bird, Buentello, Caraveo, Cutter, Esgar, Exum, Galindo, Gray, Hansen, Herod, Hooton, Kennedy, Kipp, Lontine, McCluskie, McLachlan, Melton, Michaelson Jenet, Mullica, Singer, Sirota, Snyder, Tipper, Titone, Valdez A., Valdez D., Weissman, Becker, Arndt, Coleman, Duran.

AN ACT

CONCERNING THE REGULATION OF STUDENT EDUCATION LOAN SERVICERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby:

(a) Finds that:

(I) Student loan debt has reached a crisis point. More than 44,000,000 individuals in the United States owe some amount of student loan debt. Total student loan debt in the United States currently exceeds \$1.48 trillion, surpassing both the amount of credit card debt and car loans. With tuition and other college costs on the rise, student loan debt continues to rise, with no clear reduction in sight.

(II) According to the Institute for College Access and Success, 52 percent of Colorado's students graduate with student loan debt, with an average balance of \$26,530. There are approximately 761,000 student loan borrowers in Colorado, and the total student loan debt outstanding for Coloradans is approximately \$26 billion.

(III) Student loan debt is a hindrance to the state's economy, preventing borrowers from achieving financial independence, buying property, starting businesses, and otherwise investing in Colorado's economy;

(b) Determines that:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(I) Student loan servicers administer student loans, serving as a critical link between borrowers and lenders in managing accounts, processing payments, and communicating directly with borrowers. Despite this critical relationship, according to the federal consumer financial protection bureau (CFPB), there are no consistent, market-wide federal standards for student loan servicing.

(II) The CFPB released a report in September of 2015 that found that student loan borrowers encounter servicers that discourage borrower-friendly alternative payment plans, fail to respond to questions and payment processing errors, and fail to provide sufficient information to borrowers regarding payments, benefits, interest rates, and other charges; and

(III) A report released in March of 2017 found that Coloradans complained to the CFPB 124 times about their student loan servicers in 2017 alone, and that nationally, complaints against servicers had increased by 429 percent compared to data collected in 2016; and

(c) Declares that it intends by the enactment of the "Colorado Student Loan Servicers Act" to promote all of the following:

(I) Meaningful access to federal affordable repayment and loan forgiveness benefits;

(II) Reliable information about student loans and loan repayment options;

(III) The public interest in furtherance of the state's historic police powers to protect the health, welfare, and safety of the state and, in furtherance of the public interest, the act should be liberally construed to effectuate that intent; and

(IV) Quality customer service and fair treatment.

SECTION 2. In Colorado Revised Statutes, **add** article 20 to title 5 as follows:

ARTICLE 20
Colorado Student Loan Servicers

5-20-101. Short title. THE SHORT TITLE OF THIS ARTICLE 20 IS THE "COLORADO STUDENT LOAN SERVICERS ACT".

5-20-102. Scope of article. THIS ARTICLE 20 APPLIES TO ANY PERSON ENGAGED IN SERVICING A STUDENT EDUCATION LOAN OWED BY AN INDIVIDUAL WHO IS A RESIDENT OF THIS STATE. FOR THE PURPOSES OF THIS ARTICLE 20, THE RESIDENCE OF AN INDIVIDUAL IS THE ADDRESS GIVEN BY THE INDIVIDUAL AS THE INDIVIDUAL'S RESIDENCE TO THE CREDITOR OR TO THE STUDENT LOAN SERVICER. UNTIL AN INDIVIDUAL NOTIFIES THE CREDITOR OR THE STUDENT LOAN SERVICER OF A NEW OR DIFFERENT ADDRESS, THE GIVEN ADDRESS IS PRESUMED TO BE UNCHANGED.

5-20-103. Definitions. AS USED IN THIS ARTICLE 20, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTRATOR" MEANS THE ADMINISTRATOR DESIGNATED IN SECTION

5-6-103.

(2) "CONSUMER REPORTING AGENCY" HAS THE MEANING ESTABLISHED IN SECTION 5-18-103 (4).

(3) "EDUCATION EXPENSES" MEANS ANY OF THE EXPENSES THAT ARE INCLUDED AS PART OF THE COST OF ATTENDANCE OF A STUDENT AS DEFINED IN 20 U.S.C. SEC. 108711, AS AMENDED.

(4) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(5) "SERVICING" MEANS:

(a) (I) RECEIVING ANY SCHEDULED PERIODIC PAYMENTS FROM A BORROWER OR NOTIFICATION OF SUCH PAYMENTS; AND

(II) APPLYING PAYMENTS TO THE BORROWER'S ACCOUNT PURSUANT TO THE TERMS OF A STUDENT EDUCATION LOAN OR OF THE CONTRACT GOVERNING THE SERVICING;

(b) DURING A PERIOD WHEN NO PAYMENT IS REQUIRED ON A STUDENT EDUCATION LOAN:

(I) MAINTAINING ACCOUNT RECORDS FOR THE STUDENT EDUCATION LOAN; AND

(II) COMMUNICATING WITH THE BORROWER REGARDING THE STUDENT EDUCATION LOAN, ON BEHALF OF THE LOAN'S HOLDER; OR

(c) INTERACTIONS WITH A BORROWER, INCLUDING ACTIVITIES TO HELP PREVENT DEFAULT ON OBLIGATIONS ARISING FROM STUDENT EDUCATION LOANS, CONDUCTED TO FACILITATE THE ACTIVITIES DESCRIBED IN SUBSECTION (5)(a) OR (5)(b) OF THIS SECTION.

(6) "STUDENT EDUCATION LOAN":

(a) MEANS A LOAN THAT IS MADE, INSURED, OR GUARANTEED UNDER TITLE IV OF THE FEDERAL "HIGHER EDUCATION ACT OF 1965", 20 U.S.C. SEC. 1070 ET SEQ., AS AMENDED, OR THAT IS EXTENDED TO A STUDENT LOAN BORROWER FOR THE PURPOSE OF FUNDING, IN WHOLE OR IN PART, EDUCATION EXPENSES. THE TERM INCLUDES A LOAN THAT IS EXTENDED IN ORDER TO REFINANCE OR CONSOLIDATE A STUDENT LOAN BORROWER'S EXISTING STUDENT EDUCATION LOANS.

(b) DOES NOT INCLUDE A LOAN UNDER AN OPEN-END CREDIT PLAN, AS DEFINED IN REGULATION Z, 12 CFR 1026.2 (a)(20), OR A LOAN THAT IS SECURED BY REAL PROPERTY, REGARDLESS OF THE PURPOSE FOR THE LOAN.

(7) "STUDENT LOAN BORROWER" OR "BORROWER" MEANS:

(a) AN INDIVIDUAL WHO HAS RECEIVED OR AGREED TO PAY A STUDENT

EDUCATION LOAN; OR

(b) AN INDIVIDUAL WHO SHARES RESPONSIBILITY WITH THE INDIVIDUAL SPECIFIED IN SUBSECTION (7)(a) OF THIS SECTION FOR REPAYING THE STUDENT EDUCATION LOAN.

(8) "STUDENT LOAN SERVICER":

(a) MEANS A PERSON THAT:

(I) (A) RECEIVES ANY SCHEDULED PERIODIC PAYMENTS FROM A STUDENT LOAN BORROWER OR NOTIFICATION OF THE PAYMENTS; AND

(B) APPLIES PAYMENTS TO THE STUDENT LOAN BORROWER'S ACCOUNT PURSUANT TO THE TERMS OF THE STUDENT EDUCATION LOAN OR OF THE CONTRACT GOVERNING THE SERVICING;

(II) DURING A PERIOD WHEN NO PAYMENT IS REQUIRED ON A STUDENT EDUCATION LOAN:

(A) MAINTAINS ACCOUNT RECORDS FOR THE LOAN; AND

(B) COMMUNICATES WITH THE STUDENT LOAN BORROWER REGARDING THE LOAN, ON BEHALF OF THE LOAN'S HOLDER; OR

(III) INTERACTS WITH A STUDENT LOAN BORROWER, INCLUDING ACTIVITIES TO HELP PREVENT DEFAULT ON OBLIGATIONS ARISING FROM EDUCATION LOANS, CONDUCTED TO FACILITATE THE ACTIVITIES DESCRIBED IN SUBSECTION (8)(a)(I) OR (8)(a)(II) OF THIS SECTION;

(b) DOES NOT INCLUDE:

(I) A BANK, TRUST COMPANY, OR INDUSTRIAL LOAN COMPANY DOING BUSINESS UNDER THE AUTHORITY OF, OR IN ACCORDANCE WITH, A LICENSE, CERTIFICATE, OR CHARTER ISSUED BY THE UNITED STATES OR ANY STATE, DISTRICT, TERRITORY, OR COMMONWEALTH OF THE UNITED STATES THAT IS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE;

(II) A FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCIATION, FEDERAL SAVINGS BANK, OR FEDERAL CREDIT UNION THAT IS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE;

(III) A SAVINGS AND LOAN ASSOCIATION, SAVINGS BANK, OR CREDIT UNION ORGANIZED UNDER THE LAWS OF THIS OR ANY OTHER STATE THAT IS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE;

(IV) A COLLECTION AGENCY, AS DEFINED IN SECTION 5-16-103 (3), THAT IS LICENSED PURSUANT TO SECTION 5-16-120 AND WHOSE STUDENT LOAN DEBT COLLECTION BUSINESS INVOLVES COLLECTING OR ATTEMPTING TO COLLECT ON DEFAULTED STUDENT LOANS; EXCEPT THAT A COLLECTION AGENCY THAT ALSO SERVICES NONDEFAULTED STUDENT LOANS AS PART OF ITS BUSINESS IS A STUDENT

LOAN SERVICER. FOR THE PURPOSE OF THIS SUBSECTION (8)(b)(IV), "DEFAULTED STUDENT LOANS" MEANS FEDERAL STUDENT LOANS FOR WHICH NO PAYMENT HAS BEEN RECEIVED FOR TWO HUNDRED SEVENTY DAYS OR MORE OR PRIVATE STUDENT LOANS IN DEFAULT ACCORDING TO THE TERMS OF THE LOAN DOCUMENTS. THIS SUBSECTION (8)(b)(IV) DOES NOT EXEMPT A COLLECTION AGENCY FROM COMPLYING WITH THE REQUIREMENTS OF THE "COLORADO FAIR DEBT COLLECTION PRACTICES ACT", ARTICLE 16 OF THIS TITLE 5.

(V) AN AGENCY, INSTRUMENTALITY, OR POLITICAL SUBDIVISION OF THIS STATE, BUT ONLY TO THE EXTENT THAT SERVICING IS PERFORMED THROUGH SECTION 23-1-112 AND PURSUANT TO ARTICLE 3.1 OF TITLE 23. THIS SUBSECTION (8)(b)(V) DOES NOT EXEMPT A NONGOVERNMENTAL ENTITY THAT PERFORMS STUDENT LOAN SERVICING PURSUANT TO A CONTRACT WITH AN AGENCY, INSTRUMENTALITY, OR POLITICAL SUBDIVISION OF THE STATE.

5-20-104. Student loan ombudsperson - report - fund - rules - repeal.

(1) THE ADMINISTRATOR SHALL DESIGNATE, SUPPORT, AND MAINTAIN A STUDENT LOAN OMBUDSPERSON TO PROVIDE TIMELY ASSISTANCE TO STUDENT LOAN BORROWERS. THE STUDENT LOAN OMBUDSPERSON, IN CONSULTATION WITH THE ADMINISTRATOR, SHALL:

(a) **Complaints.** RECEIVE, REVIEW, AND ATTEMPT TO RESOLVE COMPLAINTS FROM STUDENT LOAN BORROWERS, INCLUDING IN COLLABORATION WITH INSTITUTIONS OF HIGHER EDUCATION, STUDENT LOAN SERVICERS, AND ANY OTHER PARTICIPANTS IN STUDENT LOAN LENDING, INCLUDING ORIGINATORS SERVICING THEIR OWN STUDENT EDUCATION LOANS;

(b) **Data.** COMPILE AND ANALYZE DATA ON STUDENT LOAN BORROWER COMPLAINTS AS DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION;

(c) **Assistance.** ASSIST STUDENT LOAN BORROWERS IN UNDERSTANDING THEIR RIGHTS AND RESPONSIBILITIES UNDER THE TERMS OF STUDENT EDUCATION LOANS;

(d) **Information.** PROVIDE INFORMATION TO THE PUBLIC, AGENCIES, LEGISLATORS, AND OTHERS REGARDING THE PROBLEMS AND CONCERNS OF STUDENT LOAN BORROWERS AND MAKE RECOMMENDATIONS FOR RESOLVING THOSE PROBLEMS AND CONCERNS;

(e) **Laws, rules, and policies.** ANALYZE AND MONITOR THE DEVELOPMENT AND IMPLEMENTATION OF FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, REGULATIONS, RULES, AND POLICIES RELATING TO STUDENT LOAN BORROWERS AND RECOMMEND ANY NECESSARY CHANGES;

(f) **Student loan history.** REVIEW THE COMPLETE STUDENT EDUCATION LOAN HISTORY FOR A STUDENT LOAN BORROWER WHO PROVIDES WRITTEN CONSENT FOR THE REVIEW;

(g) **Availability.** DISSEMINATE INFORMATION CONCERNING THE AVAILABILITY OF THE STUDENT LOAN OMBUDSPERSON TO ASSIST STUDENT LOAN BORROWERS AND POTENTIAL STUDENT LOAN BORROWERS, INCLUDING DISSEMINATING THE INFORMATION TO INSTITUTIONS OF HIGHER EDUCATION, STUDENT LOAN SERVICERS,

AND ANY OTHER PARTICIPANTS IN STUDENT EDUCATION LOAN LENDING WITH ANY SERVICING CONCERNS;

(h) **Education course.** ESTABLISH AND MAINTAIN A STUDENT LOAN BORROWER EDUCATION COURSE WITHIN EXISTING RESOURCES THAT INCLUDES EDUCATIONAL PRESENTATIONS AND MATERIALS REGARDING STUDENT EDUCATION LOANS. THE COURSE MUST INCLUDE AT LEAST KEY LOAN TERMS, DOCUMENTATION REQUIREMENTS, MONTHLY PAYMENT OBLIGATIONS, INCOME-BASED REPAYMENT OPTIONS, LOAN FORGIVENESS, AND DISCLOSURE REQUIREMENTS.

(i) **Other actions.** TAKE ANY OTHER ACTIONS NECESSARY TO FULFILL THE DUTIES OF THE STUDENT LOAN OMBUDSPERSON AS SET FORTH IN THIS SECTION.

(2) (a) **Annual report.** THE ADMINISTRATOR SHALL SUBMIT A REPORT BY JANUARY 1 OF EACH YEAR TO THE COMMITTEES OF REFERENCE OF THE GENERAL ASSEMBLY HAVING JURISDICTION OVER EDUCATION, INSURANCE, AND FINANCIAL SERVICES MATTERS. THE REPORT MUST INCLUDE:

(I) **Implementation.** A DESCRIPTION OF ACTIONS TAKEN WITH RESPECT TO THE IMPLEMENTATION OF THIS SECTION;

(II) **Effectiveness.** AN ASSESSMENT OF THE OVERALL EFFECTIVENESS OF THE STUDENT LOAN OMBUDSPERSON; AND

(III) **Additional steps.** RECOMMENDATIONS REGARDING ADDITIONAL STEPS FOR THE ADMINISTRATOR TO GAIN REGULATORY CONTROL OVER LICENSING AND ENFORCEMENT WITH RESPECT TO STUDENT LOAN SERVICERS.

(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2023.

(3) **Student loan ombudsperson and student loan servicer licensing fund.**

(a) THE STUDENT LOAN OMBUDSPERSON AND STUDENT LOAN SERVICER LICENSING FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF LICENSING AND INVESTIGATION FEES COLLECTED PURSUANT TO SECTION 5-20-107, CIVIL PENALTIES COLLECTED PURSUANT TO SECTIONS 5-20-114 AND 5-20-117, ANY OTHER MONEY REQUIRED BY LAW TO BE DEPOSITED IN THE FUND, AND ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND.

(b) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND.

(c) ALL MONEY HELD IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT OF LAW. THE ADMINISTRATOR SHALL EXPEND MONEY HELD IN THE FUND TO ADMINISTER THIS ARTICLE 20.

5-20-105. License required. ON OR AFTER JANUARY 31, 2020, A PERSON SHALL NOT ACT AS A STUDENT LOAN SERVICER, DIRECTLY OR INDIRECTLY, WITHOUT FIRST OBTAINING A STUDENT LOAN SERVICING LICENSE FROM THE ADMINISTRATOR PURSUANT TO THIS ARTICLE 20.

5-20-106. Licensure of student loan servicers. (1) Automatic issuance of license for federal student loan servicing contractors. (a) A PERSON SEEKING TO ACT WITHIN THIS STATE AS A STUDENT LOAN SERVICER IS EXEMPT FROM THE APPLICATION PROCEDURES DESCRIBED IN SUBSECTION (2) OF THIS SECTION UPON A DETERMINATION BY THE ADMINISTRATOR THAT THE PERSON IS A PARTY TO A CONTRACT AWARDED BY THE UNITED STATES SECRETARY OF EDUCATION UNDER 20 U.S.C. SEC. 1087f, AS AMENDED. THE ADMINISTRATOR SHALL PRESCRIBE THE PROCEDURE TO DOCUMENT ELIGIBILITY FOR THE EXEMPTION.

(b) **Automatic license.** WITH REGARD TO A PERSON DEEMED EXEMPT BY THIS SUBSECTION (1), THE ADMINISTRATOR SHALL:

(I) AUTOMATICALLY ISSUE A LICENSE UPON PAYMENT OF THE FEES REQUIRED BY SECTION 5-20-107 (1)(a);

(II) AUTOMATICALLY ISSUE A RENEWAL LICENSE UPON PAYMENT OF THE FEES REQUIRED BY SECTION 5-20-107 (1)(b); AND

(III) DEEM THE PERSON TO HAVE MET ALL REQUIREMENTS SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(c) **Procedural exemptions.** A PERSON ISSUED A LICENSE PURSUANT TO THIS SUBSECTION (1) IS EXEMPT FROM SUBSECTIONS (3) TO (9) AND (11) OF THIS SECTION. A PERSON ISSUED A LICENSE PURSUANT TO THIS SUBSECTION (1) SHALL COMPLY WITH THE RECORD REQUIREMENTS IN SUBSECTION (10) OF THIS SECTION EXCEPT TO THE EXTENT THAT THE REQUIREMENTS ARE INCONSISTENT WITH FEDERAL LAW.

(d) **Notice.** A PERSON ISSUED A LICENSE PURSUANT TO THIS SUBSECTION (1) SHALL PROVIDE THE ADMINISTRATOR WITH WRITTEN NOTICE WITHIN SEVEN DAYS AFTER NOTIFICATION OF THE EXPIRATION, REVOCATION, OR TERMINATION OF ANY CONTRACT AWARDED BY THE UNITED STATES SECRETARY OF EDUCATION UNDER 20 U.S.C. SEC. 1087f. THE PERSON HAS THIRTY DAYS AFTER NOTIFICATION TO SATISFY ALL REQUIREMENTS ESTABLISHED UNDER SUBSECTION (2) OF THIS SECTION IN ORDER TO CONTINUE TO ACT WITHIN THIS STATE AS A STUDENT LOAN SERVICER. AT THE EXPIRATION OF THE THIRTY-DAY PERIOD, IF THE PERSON SEEKING TO ACT WITHIN THIS STATE AS A STUDENT LOAN SERVICER HAS NOT SATISFIED THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, THE ADMINISTRATOR SHALL SUMMARILY SUSPEND ANY LICENSE GRANTED TO THE PERSON UNDER THIS SECTION IN ACCORDANCE WITH SECTION 24-4-104 (4); EXCEPT THAT THE FULL INVESTIGATION REQUIREMENT SPECIFIED IN SECTION 24-4-104 (4)(a) DOES NOT APPLY.

(e) **Preservation of authorities.** WITH RESPECT TO STUDENT LOAN SERVICING NOT CONDUCTED PURSUANT TO A CONTRACT AWARDED BY THE UNITED STATES SECRETARY OF EDUCATION UNDER 20 U.S.C. SEC. 1087f, NOTHING IN THIS SECTION PREVENTS THE ADMINISTRATOR FROM ISSUING, OR FILING A CIVIL ACTION FOR, AN ORDER TO TEMPORARILY OR PERMANENTLY PROHIBIT OR BAR ANY PERSON FROM ACTING AS A STUDENT LOAN SERVICER OR VIOLATING APPLICABLE LAW.

(2) **Other student loan servicers.** (a) A PERSON SEEKING TO ACT WITHIN THIS STATE AS A STUDENT LOAN SERVICER, OTHER THAN A PERSON DEEMED EXEMPT BY THE ADMINISTRATOR PURSUANT TO SUBSECTION (1) OF THIS SECTION, MUST APPLY

TO THE ADMINISTRATOR FOR AN INITIAL LICENSE IN THE FORM THE ADMINISTRATOR PRESCRIBES. THE APPLICATION MUST BE ACCOMPANIED BY:

(I) A FINANCIAL STATEMENT PREPARED BY A CERTIFIED PUBLIC ACCOUNTANT OR A PUBLIC ACCOUNTANT, A GENERAL PARTNER IF THE APPLICANT IS A PARTNERSHIP, A CORPORATE OFFICER IF THE APPLICANT IS A CORPORATION, OR A MEMBER DULY AUTHORIZED TO EXECUTE FINANCIAL STATEMENTS IF THE APPLICANT IS A LIMITED LIABILITY COMPANY OR ASSOCIATION;

(II) INFORMATION REGARDING THE HISTORY OF CRIMINAL CONVICTIONS OF THE FOLLOWING:

(A) THE APPLICANT;

(B) PARTNERS OF THE APPLICANT, IF THE APPLICANT IS IN A PARTNERSHIP;

(C) MEMBERS OF THE APPLICANT, IF THE APPLICANT IS A LIMITED LIABILITY COMPANY OR ASSOCIATION; OR

(D) OFFICERS, DIRECTORS, AND PRINCIPAL EMPLOYEES OF THE APPLICANT, IF THE APPLICANT IS A CORPORATION.

(b) THE INFORMATION SUBMITTED PURSUANT TO SUBSECTION (2)(a)(II) OF THIS SECTION MUST BE SUFFICIENT, AS DETERMINED BY THE ADMINISTRATOR, TO MAKE THE FINDINGS REQUIRED UNDER THIS SECTION.

(3) Investigation of applicant. (a) UPON THE FILING OF AN APPLICATION FOR AN INITIAL LICENSE AND THE PAYMENT OF THE FEES FOR LICENSING AND INVESTIGATION PURSUANT TO SECTION 5-20-107, THE ADMINISTRATOR SHALL INVESTIGATE THE FINANCIAL CONDITION AND RESPONSIBILITY, FINANCIAL AND BUSINESS EXPERIENCE, CHARACTER, AND GENERAL FITNESS OF THE APPLICANT.

(b) THE ADMINISTRATOR MAY ISSUE A LICENSE PURSUANT TO THIS SECTION IF THE ADMINISTRATOR FINDS THAT:

(I) THE APPLICANT'S FINANCIAL CONDITION IS SOUND;

(II) THE APPLICANT'S BUSINESS WILL BE CONDUCTED HONESTLY, FAIRLY, EQUITABLY, CAREFULLY, AND EFFICIENTLY WITHIN THE PURPOSES AND INTENT OF THIS ARTICLE 20 AND IN A MANNER COMMANDING THE CONFIDENCE AND TRUST OF THE COMMUNITY;

(III) IF THE APPLICANT IS:

(A) AN INDIVIDUAL, THE INDIVIDUAL IS IN ALL RESPECTS PROPERLY QUALIFIED AND OF GOOD CHARACTER;

(B) A PARTNERSHIP, EACH PARTNER IS IN ALL RESPECTS PROPERLY QUALIFIED AND OF GOOD CHARACTER;

(C) A LIMITED LIABILITY COMPANY OR ASSOCIATION, EACH MEMBER IS IN ALL

RESPECTS PROPERLY QUALIFIED AND OF GOOD CHARACTER; OR

(D) A CORPORATION, THE PRESIDENT, CHAIR OF THE EXECUTIVE COMMITTEE, SENIOR OFFICER RESPONSIBLE FOR THE CORPORATION'S BUSINESS, CHIEF FINANCIAL OFFICER OR ANY OTHER PERSON WHO PERFORMS SIMILAR FUNCTIONS AS DETERMINED BY THE ADMINISTRATOR, EACH DIRECTOR, EACH TRUSTEE, AND EACH SHAREHOLDER OWNING TEN PERCENT OR MORE OF EACH CLASS OF THE SECURITIES OF THE CORPORATION ARE IN ALL RESPECTS PROPERLY QUALIFIED AND OF GOOD CHARACTER;

(IV) NO PERSON ACTING ON BEHALF OF THE APPLICANT KNOWINGLY HAS MADE AN INCORRECT STATEMENT OF A MATERIAL FACT IN THE APPLICATION OR IN ANY REPORT OR STATEMENT MADE PURSUANT TO THIS ARTICLE 20; AND

(V) THE APPLICANT HAS MET ANY OTHER REQUIREMENTS AS DETERMINED BY THE ADMINISTRATOR.

(4) **License expiration.** A LICENSE ISSUED PURSUANT TO THIS SECTION EXPIRES EACH JANUARY 31 UNLESS RENEWED OR EARLIER SURRENDERED, SUSPENDED, OR REVOKED PURSUANT TO THIS ARTICLE 20. NO LATER THAN FIFTEEN DAYS AFTER A LICENSEE CEASES TO ENGAGE IN THE BUSINESS OF SERVICING IN THIS STATE FOR ANY REASON, INCLUDING A BUSINESS DECISION TO TERMINATE OPERATIONS IN THIS STATE, LICENSE REVOCATION, BANKRUPTCY, OR VOLUNTARY DISSOLUTION, THE LICENSEE SHALL PROVIDE WRITTEN NOTICE OF SURRENDER TO THE ADMINISTRATOR AND SHALL SURRENDER TO THE ADMINISTRATOR ITS LICENSE FOR EACH LOCATION IN WHICH THE LICENSEE HAS CEASED TO ENGAGE IN SERVICING. THE WRITTEN NOTICE OF SURRENDER MUST IDENTIFY THE LOCATION WHERE THE RECORDS OF THE LICENSEE WILL BE STORED AND THE NAME, ADDRESS, AND TELEPHONE NUMBER OF A PERSON AUTHORIZED TO PROVIDE ACCESS TO THE RECORDS. THE SURRENDER OF A LICENSE DOES NOT REDUCE OR ELIMINATE THE LICENSEE'S CIVIL OR CRIMINAL LIABILITY ARISING FROM ACTS OR OMISSIONS OCCURRING BEFORE THE SURRENDER OF THE LICENSE, INCLUDING ANY ADMINISTRATIVE ACTIONS UNDERTAKEN BY THE ADMINISTRATOR TO REVOKE OR SUSPEND A LICENSE, ASSESS A CIVIL PENALTY, ORDER RESTITUTION, OR EXERCISE ANY OTHER AUTHORITY PROVIDED TO THE ADMINISTRATOR.

(5) **License renewal.** (a) A LICENSE ISSUED PURSUANT TO THIS SECTION MAY BE RENEWED FOR THE ENSUING TWELVE-MONTH PERIOD UPON THE FILING OF AN APPLICATION CONTAINING ALL REQUIRED RECORDS AND FEES, INCLUDING RENEWAL FEES AS ESTABLISHED BY THE ADMINISTRATOR IN ACCORDANCE WITH SECTION 5-20-107. A RENEWAL APPLICATION MUST BE FILED ON OR BEFORE JANUARY 31 OF THE YEAR IN WHICH THE LICENSE EXPIRES. THE ADMINISTRATOR MAY ESTABLISH A LATE FEE FOR ANY RENEWAL APPLICATIONS SUBMITTED AFTER JANUARY 31.

(b) IF AN APPLICATION FOR A RENEWAL LICENSE HAS BEEN FILED WITH THE ADMINISTRATOR ON OR BEFORE THE DATE THE LICENSE EXPIRES, THE LICENSE SOUGHT TO BE RENEWED CONTINUES IN EFFECT UNTIL THE ISSUANCE BY THE ADMINISTRATOR OF THE RENEWAL LICENSE APPLIED FOR OR UNTIL THE ADMINISTRATOR HAS NOTIFIED THE LICENSEE IN WRITING OF THE ADMINISTRATOR'S REFUSAL TO ISSUE THE RENEWAL LICENSE TOGETHER WITH THE GROUNDS UPON WHICH THE REFUSAL IS BASED.

(c) THE ADMINISTRATOR MAY REFUSE TO ISSUE A RENEWAL LICENSE ON ANY GROUND ON WHICH THE ADMINISTRATOR MAY REFUSE TO ISSUE AN INITIAL LICENSE.

(6) **Dishonored check.** IF A CHECK FILED WITH THE ADMINISTRATOR TO PAY A LICENSE, INVESTIGATION, OR RENEWAL FEE UNDER THIS SECTION IS DISHONORED, THE ADMINISTRATOR SHALL SUMMARILY SUSPEND THE LICENSE OR THE RENEWAL LICENSE THAT HAS BEEN ISSUED BUT IS NOT YET EFFECTIVE IN ACCORDANCE WITH SECTION 24-4-104 (4); EXCEPT THAT THE FULL INVESTIGATION REQUIREMENT SPECIFIED IN SECTION 24-4-104 (4)(a) DOES NOT APPLY. THE ADMINISTRATOR SHALL GIVE THE LICENSEE NOTICE OF THE SUMMARY SUSPENSION PENDING PROCEEDINGS FOR REVOCATION OR REFUSAL TO RENEW AND AN OPPORTUNITY FOR A HEARING ON THE ACTIONS IN ACCORDANCE WITH SECTION 5-20-113.

(7) **Update application information.** AN APPLICANT OR LICENSEE UNDER THIS SECTION SHALL NOTIFY THE ADMINISTRATOR, IN WRITING, OF ANY CHANGE IN THE INFORMATION PROVIDED IN ITS INITIAL APPLICATION FOR A LICENSE OR ITS MOST RECENT RENEWAL APPLICATION FOR A LICENSE, AS APPLICABLE, NOT LATER THAN TEN BUSINESS DAYS AFTER THE OCCURRENCE OF THE EVENT THAT RESULTS IN THE CHANGE.

(8) **Incomplete application.** THE ADMINISTRATOR MAY CONSIDER AN APPLICATION FOR A LICENSE UNDER THIS SECTION ABANDONED IF THE APPLICANT FAILS TO RESPOND TO ANY REQUEST FOR INFORMATION REQUIRED UNDER THIS ARTICLE 20 OR ANY RULES ADOPTED PURSUANT TO THIS ARTICLE 20, AS LONG AS THE ADMINISTRATOR NOTIFIES THE APPLICANT, IN WRITING, THAT THE APPLICATION WILL BE CONSIDERED ABANDONED IF THE APPLICANT FAILS TO SUBMIT THE INFORMATION WITHIN SIXTY DAYS AFTER THE DATE ON WHICH THE REQUEST FOR INFORMATION WAS MADE. ABANDONMENT OF AN APPLICATION PURSUANT TO THIS SUBSECTION (8) DOES NOT PRECLUDE THE APPLICANT FROM SUBMITTING A NEW APPLICATION FOR A LICENSE UNDER THIS ARTICLE 20.

(9) **Change of license notification.** A LICENSEE UNDER THIS SECTION SHALL NOT ACT WITHIN THIS STATE AS A STUDENT LOAN SERVICER UNDER ANY NAME OR AT ANY PLACE OF BUSINESS OTHER THAN THOSE NAMED IN THE LICENSE. A LICENSEE SHALL GIVE PRIOR WRITTEN NOTICE TO THE ADMINISTRATOR OF A CHANGE OF BUSINESS LOCATION. A LICENSEE SHALL NOT OPERATE MORE THAN ONE PLACE OF BUSINESS UNDER THE SAME LICENSE, BUT THE ADMINISTRATOR MAY ISSUE MORE THAN ONE LICENSE TO A LICENSEE THAT COMPLIES WITH THIS ARTICLE 20 AS TO EACH LICENSE. A LICENSE IS NOT TRANSFERABLE OR ASSIGNABLE.

(10) **Records retention - records request.** A STUDENT LOAN SERVICER SHALL MAINTAIN ADEQUATE RECORDS OF EACH STUDENT EDUCATION LOAN TRANSACTION FOR NOT LESS THAN TWO YEARS AFTER THE FINAL PAYMENT ON THE STUDENT EDUCATION LOAN OR THE ASSIGNMENT OF THE STUDENT EDUCATION LOAN, WHICHEVER OCCURS FIRST, OR EXCEPT AS OTHERWISE REQUIRED BY FEDERAL LAW, A FEDERAL STUDENT EDUCATION LOAN AGREEMENT, OR A CONTRACT BETWEEN THE FEDERAL GOVERNMENT AND A LICENSEE. UPON REQUEST BY THE ADMINISTRATOR, A STUDENT LOAN SERVICER SHALL MAKE THE RECORDS AVAILABLE OR SHALL SEND THE RECORDS TO THE ADMINISTRATOR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY EXPRESS DELIVERY CARRIER THAT PROVIDES A DATED DELIVERY RECEIPT, NOT LATER THAN FIVE BUSINESS DAYS AFTER REQUESTED

BY THE ADMINISTRATOR. UPON A LICENSEE'S REQUEST, THE ADMINISTRATOR MAY GRANT THE LICENSEE ADDITIONAL TIME TO MAKE THE RECORDS AVAILABLE OR TO SEND THE RECORDS TO THE ADMINISTRATOR.

(11) License suspension and revocation - refusal to renew. (a) THE ADMINISTRATOR MAY SUSPEND, REVOKE, ANNUL, LIMIT, MODIFY, OR REFUSE TO RENEW A LICENSE ISSUED PURSUANT TO SUBSECTION (2) OF THIS SECTION OR TAKE ANY OTHER ACTION IN ACCORDANCE WITH THIS ARTICLE 20 IF THE ADMINISTRATOR FINDS ONE OR MORE OF THE FOLLOWING:

(I) THE LICENSEE HAS VIOLATED ANY PROVISION OF THIS ARTICLE 20 OR ANY RULE LAWFULLY ADOPTED OR ORDER LAWFULLY ISSUED PURSUANT TO AND WITHIN THE AUTHORITY OF THIS ARTICLE 20; OR

(II) ANY FACT OR CONDITION EXISTS THAT, IF IT HAD EXISTED AT THE TIME OF THE ORIGINAL APPLICATION FOR THE LICENSE, CLEARLY WOULD HAVE WARRANTED A DENIAL OF THE LICENSE.

(b) AN ABATEMENT OF THE LICENSE FEE MAY NOT BE MADE IF THE LICENSE IS SURRENDERED, REVOKED, OR SUSPENDED.

5-20-107. License and investigation fees. (1) A PERSON APPLYING FOR LICENSURE UNDER SECTION 5-20-106 (1) OR (2) SHALL PAY THE FOLLOWING NONREFUNDABLE FEES ESTABLISHED BY THE ADMINISTRATOR:

(a) INITIAL LICENSE FEE OF AT LEAST ONE THOUSAND DOLLARS;

(b) ANNUAL RENEWAL FEE OF AT LEAST ONE THOUSAND DOLLARS; AND

(c) INVESTIGATION FEE.

(2) THE ADMINISTRATOR SHALL DETERMINE THE AMOUNT OF THE FEES REQUIRED IN THIS SECTION AND MAY PERIODICALLY REDUCE OR INCREASE THE AMOUNT OF ONE OR MORE OF THE FEES IF NECESSARY PURSUANT TO SECTION 24-75-402 (3) AND (4), TO REDUCE THE UNCOMMITTED RESERVES OF THE FUND CREATED IN SECTION 5-20-104 (3). THE FUND IS SUBJECT TO THE MAXIMUM RESERVE ESTABLISHED IN SECTION 24-75-402.

5-20-108. Affirmative acts required of student loan servicers - definitions.

(1) EXCEPT AS OTHERWISE PROVIDED IN FEDERAL LAW, FEDERAL STUDENT EDUCATION LOAN AGREEMENTS, OR A CONTRACT BETWEEN THE FEDERAL GOVERNMENT AND A STUDENT LOAN SERVICER, A STUDENT LOAN SERVICER SHALL TAKE THE ACTIONS SPECIFIED IN THIS SECTION.

(2)(a) A STUDENT LOAN SERVICER SHALL RESPOND TO A WRITTEN INQUIRY FROM A STUDENT LOAN BORROWER, THE REPRESENTATIVE OF A STUDENT LOAN BORROWER, OR THE STUDENT LOAN OMBUDSPERSON WITHIN TEN BUSINESS DAYS AFTER RECEIPT OF THE REQUEST AND, WITHIN THIRTY BUSINESS DAYS AFTER RECEIPT OF THE REQUEST, PROVIDE INFORMATION RELATING TO THE REQUEST AND, IF APPLICABLE, THE ACTION THE STUDENT LOAN SERVICER WILL TAKE TO CORRECT THE ACCOUNT OR AN EXPLANATION FOR THE STUDENT LOAN SERVICER'S POSITION THAT

THE BORROWER'S ACCOUNT IS CORRECT.

(b) THE THIRTY-DAY PERIOD DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION MAY BE EXTENDED FOR NOT MORE THAN FIFTEEN DAYS IF, BEFORE THE END OF THE THIRTY-DAY PERIOD, THE STUDENT LOAN SERVICER NOTIFIES THE BORROWER, THE BORROWER'S REPRESENTATIVE, OR THE OMBUDSPERSON, AS APPLICABLE, OF THE EXTENSION AND THE REASONS FOR THE DELAY IN RESPONDING.

(c) AFTER RECEIPT OF A WRITTEN REQUEST RELATED TO A DISPUTE ON A BORROWER'S PAYMENT ON A STUDENT EDUCATION LOAN, A STUDENT LOAN SERVICER SHALL NOT, FOR THE SIXTY DAYS FOLLOWING RECEIPT, FURNISH ADVERSE INFORMATION TO A CONSUMER REPORTING AGENCY REGARDING A PAYMENT THAT IS THE SUBJECT OF THE WRITTEN INQUIRY.

(3) (a) EXCEPT AS PROVIDED IN FEDERAL LAW OR REQUIRED BY A STUDENT LOAN AGREEMENT, A STUDENT LOAN SERVICER SHALL INQUIRE OF A BORROWER HOW TO APPLY AN OVERPAYMENT TO A STUDENT EDUCATION LOAN. A BORROWER'S DIRECTION ON HOW TO APPLY AN OVERPAYMENT TO A STUDENT EDUCATION LOAN STAYS IN EFFECT FOR ANY FUTURE OVERPAYMENTS DURING THE TERM OF A STUDENT EDUCATION LOAN UNTIL THE BORROWER PROVIDES DIFFERENT DIRECTIONS.

(b) FOR PURPOSES OF THIS SUBSECTION (3), "OVERPAYMENT" MEANS A PAYMENT ON A STUDENT EDUCATION LOAN IN EXCESS OF THE MONTHLY AMOUNT DUE FROM A BORROWER ON A STUDENT EDUCATION LOAN, ALSO COMMONLY REFERRED TO AS A PREPAYMENT.

(4) (a) A STUDENT LOAN SERVICER SHALL APPLY PARTIAL PAYMENTS IN A MANNER THAT MINIMIZES LATE FEES AND NEGATIVE CREDIT REPORTING. WHERE LOANS ON A BORROWER'S STUDENT LOAN ACCOUNT HAVE AN EQUAL LEVEL OF DELINQUENCY, A STUDENT LOAN SERVICER SHALL APPLY PARTIAL PAYMENTS TO SATISFY AS MANY INDIVIDUAL LOAN PAYMENTS AS POSSIBLE ON A BORROWER'S ACCOUNT.

(b) FOR PURPOSES OF THIS SUBSECTION (4), "PARTIAL PAYMENT" MEANS A PAYMENT ON A STUDENT LOAN ACCOUNT THAT CONTAINS MULTIPLE INDIVIDUAL LOANS IN AN AMOUNT LESS THAN THE AMOUNT NECESSARY TO SATISFY THE OUTSTANDING PAYMENT DUE ON ALL LOANS IN THE STUDENT LOAN ACCOUNT, ALSO COMMONLY REFERRED TO AS AN UNDERPAYMENT.

(5) IN THE EVENT OF THE SALE, ASSIGNMENT, OR OTHER TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN THAT RESULTS IN A CHANGE IN THE IDENTITY OF THE PERSON TO WHOM A STUDENT LOAN BORROWER IS REQUIRED TO SEND PAYMENTS OR DIRECT ANY COMMUNICATION CONCERNING THE STUDENT EDUCATION LOAN, THE FOLLOWING PROVISIONS APPLY:

(a) AS A CONDITION OF A SALE, AN ASSIGNMENT, OR ANY OTHER TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN, A STUDENT LOAN SERVICER SHALL REQUIRE THE NEW STUDENT LOAN SERVICER TO HONOR ALL BENEFITS ORIGINALLY REPRESENTED AS AVAILABLE TO A STUDENT LOAN BORROWER DURING THE REPAYMENT OF THE STUDENT EDUCATION LOAN AND PRESERVE THE AVAILABILITY OF THE BENEFITS, INCLUDING ANY BENEFITS FOR WHICH THE STUDENT LOAN

BORROWER HAS NOT YET QUALIFIED. IF A STUDENT LOAN SERVICER IS NOT ALSO THE LOAN HOLDER OR IS NOT ACTING ON BEHALF OF THE LOAN HOLDER, THE STUDENT LOAN SERVICER SATISFIES THE REQUIREMENT ESTABLISHED BY THIS SUBSECTION (5)(a) BY PROVIDING THE NEW STUDENT LOAN SERVICER WITH INFORMATION NECESSARY FOR THE NEW STUDENT LOAN SERVICER TO HONOR ALL BENEFITS ORIGINALLY REPRESENTED AS AVAILABLE TO A STUDENT LOAN BORROWER DURING THE REPAYMENT OF THE STUDENT EDUCATION LOAN AND PRESERVE THE AVAILABILITY OF THE BENEFITS, INCLUDING ANY BENEFITS FOR WHICH THE STUDENT LOAN BORROWER HAS NOT YET QUALIFIED.

(b) A STUDENT LOAN SERVICER SHALL TRANSFER TO THE NEW STUDENT LOAN SERVICER ALL RECORDS REGARDING THE STUDENT LOAN BORROWER, THE ACCOUNT OF THE STUDENT LOAN BORROWER, AND THE STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

(c) THE RECORDS REQUIRED UNDER SUBSECTION (5)(b) OF THIS SECTION INCLUDE THE REPAYMENT STATUS OF THE STUDENT LOAN BORROWER AND ANY BENEFITS ASSOCIATED WITH THE STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

(d) THE STUDENT LOAN SERVICER SHALL COMPLETE THE TRANSFER OF RECORDS REQUIRED UNDER SUBSECTION (5)(b) OF THIS SECTION WITHIN FORTY-FIVE DAYS AFTER THE SALE, ASSIGNMENT, OR OTHER TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN.

(e) THE PARTIES SHALL NOTIFY AFFECTED STUDENT LOAN BORROWERS OF THE SALE, ASSIGNMENT, OR OTHER TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN AT LEAST SEVEN DAYS BEFORE THE NEXT PAYMENT ON THE LOAN IS DUE. THE NOTICE MUST INCLUDE:

(I) THE IDENTITY OF THE NEW STUDENT LOAN SERVICER;

(II) THE EFFECTIVE DATE OF THE TRANSFER OF THE STUDENT LOAN BORROWER'S STUDENT EDUCATION LOAN TO THE NEW STUDENT LOAN SERVICER;

(III) THE DATE ON WHICH THE EXISTING STUDENT LOAN SERVICER WILL NO LONGER ACCEPT PAYMENTS; AND

(IV) THE CONTACT INFORMATION FOR THE NEW STUDENT LOAN SERVICER.

(6) A STUDENT LOAN SERVICER THAT SERVICES A STUDENT EDUCATION LOAN SHALL ADOPT POLICIES AND PROCEDURES TO VERIFY THAT THE STUDENT LOAN SERVICER HAS RECEIVED ALL RECORDS REGARDING THE STUDENT LOAN BORROWER, THE ACCOUNT OF THE STUDENT LOAN BORROWER, AND THE STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER, INCLUDING THE REPAYMENT STATUS OF THE STUDENT LOAN BORROWER AND ANY BENEFITS ASSOCIATED WITH THE STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

5-20-109. Prohibited acts of student loan servicers. (1) A STUDENT LOAN SERVICER SHALL NOT:

(a) DIRECTLY OR INDIRECTLY EMPLOY A SCHEME, A DEVICE, OR ARTIFICE TO DEFRAUD OR MISLEAD STUDENT LOAN BORROWERS;

(b) ENGAGE IN AN UNFAIR OR DECEPTIVE PRACTICE TOWARD ANY PERSON OR MISREPRESENT OR OMIT ANY MATERIAL INFORMATION IN CONNECTION WITH THE SERVICING OF A STUDENT EDUCATION LOAN, INCLUDING MISREPRESENTING THE AMOUNT, NATURE, OR TERMS OF ANY FEE OR PAYMENT DUE OR CLAIMED TO BE DUE ON A STUDENT EDUCATION LOAN, THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT, OR THE STUDENT LOAN BORROWER'S OBLIGATIONS UNDER THE LOAN;

(c) OBTAIN PROPERTY BY FRAUD OR MISREPRESENTATION;

(d) MISAPPLY STUDENT EDUCATION LOAN PAYMENTS TO THE OUTSTANDING BALANCE OF A STUDENT EDUCATION LOAN;

(e) PROVIDE INACCURATE INFORMATION TO A CONSUMER REPORTING AGENCY;

(f) FAIL TO REPORT BOTH THE FAVORABLE AND UNFAVORABLE PAYMENT HISTORY OF A STUDENT LOAN BORROWER TO A CONSUMER REPORTING AGENCY AT LEAST ANNUALLY IF THE STUDENT LOAN SERVICER REGULARLY REPORTS INFORMATION TO A CONSUMER REPORTING AGENCY;

(g) REFUSE TO COMMUNICATE WITH AN AUTHORIZED REPRESENTATIVE OF A STUDENT LOAN BORROWER WHO PROVIDES A WRITTEN AUTHORIZATION SIGNED BY THE STUDENT LOAN BORROWER; EXCEPT THAT THE STUDENT LOAN SERVICER MAY ADOPT PROCEDURES REASONABLY RELATED TO VERIFYING THAT THE REPRESENTATIVE IS IN FACT AUTHORIZED TO ACT ON BEHALF OF THE STUDENT LOAN BORROWER;

(h) MAKE ANY FALSE STATEMENT OR OMIT ANY MATERIAL FACT IN CONNECTION WITH INFORMATION OR REPORTS FILED WITH A GOVERNMENTAL AGENCY OR IN CONNECTION WITH AN INVESTIGATION CONDUCTED BY THE ADMINISTRATOR OR ANOTHER GOVERNMENTAL AGENCY; OR

(i) EXCEPT AS OTHERWISE PROVIDED IN FEDERAL LAW, FEDERAL STUDENT LOAN AGREEMENTS, OR A CONTRACT BETWEEN THE FEDERAL GOVERNMENT AND A STUDENT LOAN SERVICER, FAIL TO PROPERLY EVALUATE A STUDENT LOAN BORROWER FOR AN INCOME-BASED OR OTHER STUDENT LOAN REPAYMENT PROGRAM OR FOR ELIGIBILITY FOR A PUBLIC SERVICE LOAN FORGIVENESS PROGRAM BEFORE PLACING THE STUDENT LOAN BORROWER IN FORBEARANCE OR DEFAULT, IF AN INCOME-BASED REPAYMENT OR OTHER PROGRAM IS AVAILABLE TO THE STUDENT LOAN BORROWER.

5-20-110. Powers and duties of the administrator - rules. (1) THE ADMINISTRATOR MAY CONDUCT INVESTIGATIONS AND EXAMINATIONS AS FOLLOWS:

(a) FOR PURPOSES OF INITIAL LICENSING, LICENSE RENEWAL, LICENSE SUSPENSION, LICENSE REVOCATION OR TERMINATION, OR GENERAL OR SPECIFIC INQUIRY OR INVESTIGATION TO DETERMINE COMPLIANCE WITH THIS ARTICLE 20, THE ADMINISTRATOR MAY ACCESS, RECEIVE, AND USE ANY RECORDS OR INFORMATION BELONGING TO A LICENSEE OR PERSON UNDER EXAMINATION, INCLUDING CRIMINAL,

CIVIL, AND ADMINISTRATIVE HISTORY INFORMATION; PERSONAL HISTORY AND EXPERIENCE INFORMATION, INCLUDING INDEPENDENT CREDIT REPORTS OBTAINED FROM A CONSUMER REPORTING AGENCY DESCRIBED IN SECTION 603 (p) OF THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681a, AS AMENDED; AND ANY OTHER RECORDS OR INFORMATION THE ADMINISTRATOR CONSIDERS RELEVANT TO THE INQUIRY OR INVESTIGATION REGARDLESS OF THE LOCATION, POSSESSION, CONTROL, OR CUSTODY OF THE RECORDS OR INFORMATION.

(b) FOR THE PURPOSES OF INVESTIGATING VIOLATIONS OR COMPLAINTS ARISING UNDER THIS ARTICLE 20 OR FOR THE PURPOSES OF EXAMINATION, THE ADMINISTRATOR MAY REVIEW, INVESTIGATE, OR EXAMINE ANY LICENSEE OR PERSON SUBJECT TO THIS ARTICLE 20 AS OFTEN AS NECESSARY IN ORDER TO CARRY OUT THE PURPOSES OF THIS ARTICLE 20. THE ADMINISTRATOR MAY DIRECT, SUBPOENA, OR ORDER THE ATTENDANCE OF AND EXAMINE UNDER OATH ANY PERSON WHOSE TESTIMONY MAY BE REQUIRED ABOUT THE STUDENT EDUCATION LOAN OR THE BUSINESS OR SUBJECT MATTER OF AN EXAMINATION OR INVESTIGATION AND MAY DIRECT, SUBPOENA, OR ORDER THE PERSON TO PRODUCE RECORDS THE ADMINISTRATOR CONSIDERS RELEVANT TO THE INQUIRY.

(c) (I) IN MAKING AN EXAMINATION OR INVESTIGATION AUTHORIZED BY THIS SECTION, THE ADMINISTRATOR MAY CONTROL ACCESS TO ANY RECORDS OF THE LICENSEE OR PERSON UNDER EXAMINATION OR INVESTIGATION. THE ADMINISTRATOR MAY TAKE POSSESSION OF THE RECORDS OR PLACE A PERSON IN EXCLUSIVE CHARGE OF THE RECORDS IN THE PLACE WHERE THEY ARE USUALLY KEPT.

(II) DURING THE PERIOD OF ADMINISTRATOR CONTROL PURSUANT TO THIS SUBSECTION (1)(c), A PERSON MAY NOT REMOVE OR ATTEMPT TO REMOVE ANY OF THE RECORDS EXCEPT PURSUANT TO A COURT ORDER OR WITH THE CONSENT OF THE ADMINISTRATOR. UNLESS THE ADMINISTRATOR HAS REASONABLE GROUNDS TO BELIEVE THAT THE RECORDS OF THE LICENSEE OR PERSON HAVE BEEN, OR ARE AT RISK OF BEING, ALTERED OR DESTROYED FOR PURPOSES OF CONCEALING A VIOLATION OF THIS ARTICLE 20, THE LICENSEE OR OWNER OF THE RECORDS MAY HAVE ACCESS TO THE RECORDS AS NECESSARY TO CONDUCT ITS ORDINARY BUSINESS AFFAIRS.

(2) IN ORDER TO CARRY OUT THE PURPOSES OF THIS SECTION, THE ADMINISTRATOR MAY:

(a) RETAIN ATTORNEYS, ACCOUNTANTS, OR OTHER PROFESSIONALS AND SPECIALISTS AS EXAMINERS, AUDITORS, OR INVESTIGATORS TO CONDUCT OR ASSIST IN THE CONDUCT OF EXAMINATIONS OR INVESTIGATIONS;

(b) ENTER INTO AGREEMENTS OR RELATIONSHIPS WITH OTHER GOVERNMENT OFFICIALS OR REGULATORY ASSOCIATIONS IN ORDER TO IMPROVE EFFICIENCIES AND REDUCE REGULATORY BURDEN BY SHARING RESOURCES, STANDARDIZED OR UNIFORM METHODS OR PROCEDURES, AND RECORDS OR INFORMATION OBTAINED UNDER THIS SECTION;

(c) USE, HIRE, CONTRACT FOR, OR EMPLOY PUBLICLY OR PRIVATELY AVAILABLE ANALYTICAL SYSTEMS, METHODS, OR SOFTWARE TO EXAMINE OR INVESTIGATE THE LICENSEE OR PERSON SUBJECT TO THIS ARTICLE 20;

(d) ACCEPT AND RELY ON EXAMINATION OR INVESTIGATION REPORTS MADE BY OTHER GOVERNMENT OFFICIALS WITHIN OR OUTSIDE THIS STATE; AND

(e) ACCEPT AUDIT REPORTS MADE BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT OF THE LICENSEE OR PERSON SUBJECT TO THIS ARTICLE 20 IN THE COURSE OF THAT PART OF THE EXAMINATION COVERING THE SAME GENERAL SUBJECT MATTER AS THE AUDIT AND MAY INCORPORATE THE AUDIT REPORT IN A REPORT OF EXAMINATION, REPORT OF INVESTIGATION, OR OTHER WRITING OF THE ADMINISTRATOR.

(3) A PERSON SUBJECT TO INVESTIGATION OR EXAMINATION UNDER THIS SECTION SHALL NOT KNOWINGLY WITHHOLD, ABSTRACT, REMOVE, MUTILATE, OR DESTROY ANY RECORDS OR OTHER INFORMATION RELATING TO INFORMATION REGULATED UNDER THIS ARTICLE 20.

(4) WHENEVER IT APPEARS TO THE ADMINISTRATOR THAT A PERSON HAS VIOLATED, IS VIOLATING, OR IS ABOUT TO VIOLATE A PROVISION OF THIS ARTICLE 20 OR A RULE ADOPTED PURSUANT TO THIS ARTICLE 20 OR THAT A LICENSEE OR AN OWNER, DIRECTOR, OFFICER, MEMBER, PARTNER, SHAREHOLDER, TRUSTEE, EMPLOYEE, OR AGENT OF THE LICENSEE HAS COMMITTED FRAUD, ENGAGED IN DISHONEST ACTIVITIES, OR MADE A MISREPRESENTATION, THE ADMINISTRATOR MAY TAKE ACTION AGAINST THE PERSON OR LICENSEE IN ACCORDANCE WITH THIS ARTICLE 20.

(5) THE ADMINISTRATOR SHALL ADOPT RULES AS NECESSARY TO IMPLEMENT THIS ARTICLE 20.

5-20-111. Compliance with federal law. A STUDENT LOAN SERVICER SHALL COMPLY WITH ALL APPLICABLE FEDERAL LAWS AND REGULATIONS RELATING TO SERVICING, INCLUDING THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 TO 1667f, AS AMENDED, AND THE REGULATIONS ADOPTED PURSUANT TO THAT ACT. IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW, A VIOLATION OF THAT ACT OR REGULATIONS ADOPTED PURSUANT TO THAT ACT IS A VIOLATION OF THIS ARTICLE 20 AND A BASIS UPON WHICH THE ADMINISTRATOR MAY TAKE ENFORCEMENT ACTION PURSUANT TO THIS ARTICLE 20.

5-20-112. Civil action. (1) A VIOLATION OF THIS ARTICLE 20 IS A DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF SECTION 6-1-105.

(2) A STUDENT LOAN SERVICER WHO FAILS TO COMPLY WITH ANY REQUIREMENT IMPOSED UNDER THIS ARTICLE 20 WITH RESPECT TO A STUDENT LOAN BORROWER IS LIABLE IN AN AMOUNT EQUAL TO THE SUM OF:

(a) ANY ACTUAL DAMAGES SUSTAINED BY THE STUDENT LOAN BORROWER AS A RESULT OF THE FAILURE;

(b) A MONETARY AWARD EQUAL TO THREE TIMES THE TOTAL AMOUNT THE STUDENT LOAN SERVICER COLLECTED FROM THE STUDENT LOAN BORROWER IN VIOLATION OF THIS ARTICLE 20;

(c) PUNITIVE DAMAGES AS THE COURT MAY ALLOW; AND

(d) IN THE CASE OF ANY SUCCESSFUL ACTION BY A STUDENT LOAN BORROWER TO ENFORCE THE LIABILITY SET OUT IN THIS SECTION, THE COSTS OF THE ACTION, TOGETHER WITH REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

(3) THE REMEDIES PROVIDED IN THIS SECTION ARE NOT THE EXCLUSIVE REMEDIES AVAILABLE TO A STUDENT LOAN BORROWER.

5-20-113. Application of administrative procedures - provisions. EXCEPT AS OTHERWISE PROVIDED, SECTIONS 24-4-102 TO 24-4-106 APPLY TO AND GOVERN ALL RULES PROMULGATED AND ALL ADMINISTRATIVE ACTION TAKEN BY THE ADMINISTRATOR PURSUANT TO THIS ARTICLE 20; EXCEPT THAT SECTION 24-4-104(3) DOES NOT APPLY TO ANY SUCH ACTION.

5-20-114. Administrative enforcement orders. (1) AFTER NOTICE AND HEARING, THE ADMINISTRATOR MAY ORDER A STUDENT LOAN SERVICER OR A PERSON ACTING IN THE STUDENT LOAN SERVICER'S BEHALF TO CEASE AND DESIST FROM ENGAGING IN VIOLATIONS OF THIS ARTICLE 20 OR ANY RULE LAWFULLY ADOPTED OR ORDER LAWFULLY ISSUED PURSUANT TO THIS ARTICLE 20. THE ORDER ISSUED BY THE ADMINISTRATOR MAY ALSO REQUIRE THE STUDENT LOAN SERVICER OR PERSON TO MAKE REFUNDS TO PERSONS OF UNLAWFUL CHARGES UNDER THIS ARTICLE 20 AND AN ADMINISTRATIVE PENALTY OF UP TO ONE THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION, ALL OR PART OF WHICH MAY BE SPECIFICALLY DESIGNATED FOR CONSUMER AND CREDITOR EDUCATIONAL PURPOSES.

(2) A RESPONDENT AGGRIEVED BY AN ORDER OF THE ADMINISTRATOR MAY OBTAIN JUDICIAL REVIEW OF THE ORDER IN THE COLORADO COURT OF APPEALS. THE ADMINISTRATOR MAY OBTAIN AN ORDER OF THE COURT FOR ENFORCEMENT OF THE ADMINISTRATOR'S ORDER IN THE DISTRICT COURT UNDER SECTION 24-4-106. ALL PROCEEDINGS UNDER THIS SECTION ARE GOVERNED BY SECTIONS 24-4-105 AND 24-4-106.

5-20-115. Assurance of discontinuance. IF IT IS CLAIMED THAT A PERSON HAS VIOLATED THIS ARTICLE 20, THE ADMINISTRATOR MAY ACCEPT AN ASSURANCE IN WRITING THAT THE PERSON WILL NOT ENGAGE IN THE CONDUCT IN THE FUTURE. THE ASSURANCE MAY ALSO REQUIRE THE PERSON TO MAKE REFUNDS TO PERSONS OF UNLAWFUL CHARGES UNDER THIS ARTICLE 20, PAY A PENALTY AUTHORIZED IN SECTION 5-20-114 (1), ALL OR PART OF WHICH MAY BE SPECIFICALLY DESIGNATED FOR CONSUMER AND CREDITOR EDUCATIONAL PURPOSES, AND REIMBURSE THE ADMINISTRATOR FOR THE ADMINISTRATOR'S REASONABLE COSTS INCURRED IN INVESTIGATING THE CONDUCT. IF A PERSON GIVING AN ASSURANCE OF DISCONTINUANCE FAILS TO COMPLY WITH ITS TERMS, THE ASSURANCE IS EVIDENCE THAT PRIOR TO THE ASSURANCE THE PERSON ENGAGED IN THE CONDUCT DESCRIBED IN THE ASSURANCE.

5-20-116. Injunctions. THE ADMINISTRATOR MAY BRING A CIVIL ACTION TO RESTRAIN A PERSON FROM VIOLATING THIS ARTICLE 20 OR RULES PROMULGATED PURSUANT TO THIS ARTICLE 20 AND FOR OTHER APPROPRIATE RELIEF, INCLUDING SUCH ORDERS OR JUDGMENTS AS MAY BE NECESSARY TO COMPLETELY COMPENSATE OR RESTORE ANY PERSON AFFECTED BY THE VIOLATION TO THE PERSON'S ORIGINAL POSITION. THE ADMINISTRATOR MAY ALSO APPLY FOR A TEMPORARY RESTRAINING ORDER OR A PRELIMINARY INJUNCTION AGAINST A RESPONDENT PENDING FINAL

DETERMINATION OF PROCEEDINGS. NO BOND OR OTHER SECURITY IS REQUIRED OF THE ADMINISTRATOR BEFORE RELIEF UNDER THIS SECTION MAY BE GRANTED.

5-20-117. Civil actions by the administrator. THE ADMINISTRATOR MAY BRING A CIVIL ACTION AGAINST A STUDENT LOAN SERVICER FOR ANY VIOLATION OF THIS ARTICLE 20. AN ACTION MAY RELATE TO TRANSACTIONS WITH MORE THAN ONE PERSON. THE COURT MAY ORDER A STUDENT LOAN SERVICER TO REFUND TO A PERSON ANY CHARGES COLLECTED IN VIOLATION OF THIS ARTICLE 20 AND MAY ALSO ASSESS CIVIL PENALTIES AGAINST THE STUDENT LOAN SERVICER AS SET FORTH IN SECTION 5-20-112 (2). IF THE ADMINISTRATOR PREVAILS IN AN ACTION BROUGHT UNDER THIS SECTION, THE ADMINISTRATOR MAY RECOVER REASONABLE COSTS IN INVESTIGATING AND BRINGING THE ACTION AND MAY RECOVER REASONABLE ATTORNEY FEES.

5-20-118. Limitations. NOTWITHSTANDING ARTICLE 80 OF TITLE 13, ALL ACTIONS BROUGHT UNDER THIS ARTICLE 20 MUST BE COMMENCED WITHIN FOUR YEARS AFTER THE DATE ON WHICH ANY VIOLATION OF THIS ARTICLE 20 OCCURRED OR THE DATE ON WHICH THE LAST IN A SERIES OF SUCH ACTS OR PRACTICES OCCURRED OR WITHIN FOUR YEARS AFTER THE PLAINTIFF DISCOVERED OR IN THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE DISCOVERED THE OCCURRENCE OF A VIOLATION OF THIS ARTICLE 20; EXCEPT THAT THE PERIOD OF LIMITATION PROVIDED IN THIS SECTION MAY BE EXTENDED FOR A PERIOD OF ONE YEAR IF THE PLAINTIFF PROVES THAT FAILURE TO TIMELY COMMENCE THE ACTION WAS CAUSED BY THE DEFENDANT ENGAGING IN CONDUCT CALCULATED TO INDUCE THE PLAINTIFF TO REFRAIN FROM OR POSTPONE THE COMMENCEMENT OF THE ACTION.

5-20-119. Confidential information. (1) THE ADMINISTRATOR SHALL NOT MAKE PUBLIC THE NAME OR IDENTITY OF A PERSON WHOSE ACTS OR CONDUCT THE ADMINISTRATOR INVESTIGATES OR EXAMINES PURSUANT TO THIS ARTICLE 20 OR THE FACTS DISCLOSED IN THE INVESTIGATION OR EXAMINATION.

(2) THE ADMINISTRATOR MAY DISCLOSE LICENSE APPLICATION AND RENEWAL RECORDS PROVIDED TO THE ADMINISTRATOR AND OTHER CONTENTS OF LICENSE RECORDS MAINTAINED PURSUANT TO THIS ARTICLE 20, BUT THE ADMINISTRATOR SHALL NOT MAKE PUBLIC THE CONFIDENTIAL INFORMATION CONTAINED IN THE RECORDS.

(3) THE RESTRICTIONS ON THE DISCLOSURE OF INFORMATION IN SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY TO DISCLOSURES BY THE ADMINISTRATOR IN ACTIONS OR ADMINISTRATIVE ENFORCEMENT PROCEEDINGS PURSUANT TO THIS ARTICLE 20.

SECTION 3. In Colorado Revised Statutes, 6-1-105, **add** (1)(lll) as follows:

6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(lll) VIOLATES ARTICLE 20 OF TITLE 5.

SECTION 4. In Colorado Revised Statutes, 13-4-102, **add** (2)(mm) as follows:

13-4-102. Jurisdiction. (2) The court of appeals has initial jurisdiction to:

(mm) REVIEW FINAL DECISIONS OR ORDERS OF THE ADMINISTRATOR AS PROVIDED IN ARTICLE 20 OF TITLE 5.

SECTION 5. Appropriation. For the 2019-20 state fiscal year, \$115,273 is appropriated to the department of law. This appropriation is from the general fund and is based on an assumption that the department will require an additional 1.4 FTE. To implement this act, the department may use this appropriation for the consumer credit unit.

SECTION 6. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: May 13, 2019